

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 472 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE H.K.RATHOD**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
BHIKHABHAI LAXMANBHAI VANJARA - Respondent(s)

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Appearance :

MR MUKESH PATEL Ld. AGP for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**Date : 03/02/2006****ORAL JUDGMENT**

1. Heard learned AGP, Mr.Mukesh Patel, on behalf of petitioners. Though rule has been served, no appearance is filed on behalf of respondent.

Therefore, rule served and in absence of respondent, matter has been taken up for final hearing. Even today, when the matter has been taken up, respondent - Bhikhabhai Laxmanbhai Vanjara is not present.

2. In the present petition, petitioners have challenged the award passed by Labour Court, Godhara in Reference No.387 of 1997 dated 17th December,2002, wherein, Labour Court, Godhara has set aside termination order dated 10th November,1995 and granted reinstatement with continuity of service and 35% back wages of interim period. The Labour Court, Godhara has also awarded cost of Rs.500/- to be paid to respondent by petitioners.

3. Initially, this Court has issued rule on 19th January,2004 and ad-interim relief in terms of Para.8(C) was granted with a further direction to the Superintending Engineering in charge of Executive Engineer and Deputy Executive Engineer (R & B), Godhara shall inquire as to whether there was any default on the part of the concerned officer of the

State Government in not giving deposition or not. Such report should be produced before this Court on or before 25th February, 2004. Thereafter, this Court has issued notice for interim relief returnable on 26th February, 2004. Then, on 18th June, 2004, this Court has passed further order that earlier interim relief granted is confirmed so far in respect to the direction of payment of back wages. On 18th June, 2004, learned AGP, Mr. Mengdey, made a statement before this Court that respondent - workman was already reinstated in service before this order was passed by this Court but, on that occasion, a request was made to stay the back wages of interim period.

4. Learned AGP, Mr. Mukesh Patel, appearing for the petitioners submitted that workman himself remained absent and abandoned the job and, not resumed the duty. Therefore, there is no question of holding departmental inquiry against the workman and scope of initiating inquiry does not exist. He submitted that notice was issued by the petitioner to the respondent but, he has not reported and remained absent and,

therefore, ultimately, petitioner has decided to terminate his service. Mr.Patel submitted that respondent workman was involved in criminal case and was arrested by the police authorities, and remained in custody for a period from 12th November,1995 to 27th November,1995 and thereafter, workman had not reported for work. Therefore, he remained absent and ultimately, a decision has been taken that his service has been terminated. He submitted that there is no termination order issued against the respondent by the petitioner. He also submitted that letter vide Exh.18 was served to the workman that why he was not put under suspension but, no reply has been given by workman and has not reported for work. Therefore, no order of suspension has been passed by petitioner. He also submitted that there is no need to issue charge - sheet for holding inquiry when workman remained absent and not reported for work. Therefore, according to him, the Labour Court has committed gross error in granting reinstatement in favour of respondent - workman. Learned AGP, Mr.Patel, also submitted that back wages which has been granted by

Labour Court is also contrary to the record. He submitted that workman has admitted the gainful employment and, therefore, grant of 35% back wages is also amounts to basic error committed by the Labour Court. Therefore, in short, his submission is that award passed by the Labour Court is required to be set aside.

5. I have considered the submissions made learned AGP, Mr.Patel and have perused the award passed by Labour Court, Godhara. I have also perused the copy of statement of claim filed by workman and written statement filed by petitioners before the Labour Court.

6. The Reference was made to the Labour Court, Godhara on 6th October,1997. The respondent workman was working with the petitioner since 1980 and his service was terminated w.e.f. 10th November,1995. Before the Labour Court, workman was examined vide Exh.7 and he was cross-examined by petitioner vide Exh.14. Then, petitioner has filed reply vide Exh.15

and produced certain documents vide Exh.16. Thereafter, petitioner has examined one witness Shri Subhashchandra Ramanlal Parikh vide Exh.26 and one document was produced on record vide Exh.27.

7. Thereafter, Labour Court has considered the evidence on record produced by both the parties. The Labour Court has come to the conclusion that evidence of workman remained unchallenged and there is no contrary evidence produced by the petitioner on record. The workman was appointed on 3rd May,1990 and his service was terminated on 10th November,1995. Before that, no notice or notice pay and retrenchment compensation was paid to the workman and no departmental inquiry was initiated against him. The fact that, criminal complaint was filed against workman, wherein, he was arrested by police and remained in custody, is not in much dispute between the parties. The question was considered by Labour Court that on 13th December,1995, a Work Charge Assistant of petitioner wrote a letter to the higher authority about absence of workman concerned. Then,

vide Exh.18, petitioner has served a notice to the workman concerned and called for an explanation that why he was not suspended from service, which was replied by workman on 18th December,1995, vide Exh.19. Thereafter, workman raised an industrial dispute vide Exh.20 writing a letter to petitioner to reinstate him. Similar request was made vide Exh.21 by the workman. But, no response was given by the petitioner and, therefore, Labour Court has come to the conclusion that when there was some allegations against the workman about misconduct or he remained absent or he abandoned the job, then, on all three occasions, it is a duty of the petitioner to hold the departmental inquiry against the respondent workman and to give reasonable opportunity to the workman concerned before terminating the service of workman. The Labour Court has come to conclusion that after receiving a notice from petitioner by the workman, the workman gave reply but, thereafter, no steps have been taken by the petitioner; no charge - sheet or show cause notice was served to the respondent workman. Therefore, Labour Court has come to

conclusion that the petitioner has violated the principles of natural justice and provision of standing orders. The Labour Court also considered that before raising the industrial dispute, letters were written to petitioner on 18th December, 1995, 25th June, 1996 and 14th June, 1996. These are the letters written by the respondent to the petitioner but, no reply has been given by the petitioner and respondent was not allowed to resume the duties by the petitioner. Therefore, Labour Court has relied upon the evidence of the workman and come to the conclusion that service of the respondent workman was terminated which is contrary to the principles of natural justice and no reasonable opportunity was given and, therefore, Labour Court has set aside the termination order. Labour Court has also further considered that some miscellaneous work wherein workman was getting Rs.50 to Rs.60 per day and considering his last salary of Rs.2000/-, deducting this part of gainful employment, granted 35% back wages of interim period. Respondent workman was already reinstated in service before this Court

passed an interim order. This statement was made by learned AGP, Mr.Mengdey, before this Court. Considering the observations made by Labour Court and reasons given by Labour Court for setting aside the termination order, according to my opinion, Labour Court has rightly decided the Reference. The facts on record are not much in dispute between the parties. There was a criminal complaint against the respondent workman and for that, he was arrested and remained in custody before the police authority. The workman has remained in service about more than 15 years with the petitioner, even though his service has been terminated without following legal procedure. The petitioner has not served any charge-sheet or show cause notice to the workman. In case of abandonment of service also, it is a duty of the petitioner to serve a notice to the workman before terminating the service but, even that show cause notice was also not served before terminating service of workman. In case of when workman remained absent also, before taking the decision of termination, it is a duty of the petitioner to serve a notice to the workman. But, no

such notice has been served before terminating the service of workman. So, on all the three counts, the reasonable opportunity has not been given to the workman by the petitioner. The defence of the petitioner is that he was involved in criminal case, therefore, notice of suspension has been served to the workman. But, for that, no decision of suspension has been taken. The second defence is that workman abandoned the job. For that also, no notice has been served before taking the decision of termination. The third defence is that workman remained absent. For that also, no notice has been served to the workman. Therefore, considering this fact, when no notice has been served to the workman before terminating his service before giving reasonable opportunity to the workman, naturally, order of termination is bad for non-compliance of principles of natural justice. This view has been taken by this Court in case of L.H.Sharma Vs. Council of Homeopathic System of Medicine & Others, 2003 (4) GLH 2782. The relevant paragraph from the Apex Court's decision which has been relied and referred by this Court in case of

Dipti Prakash Banerjee Vs. S.N.Bose National Center for Basic Sciences, Calcutta reported in AIR 1999 SC 983, Para.47 is quoted as under :

"47. Learned senior counsel for the respondent submitted on the basis of State of Haryana v. Jagdish Chander (1995) 2 SCC 567 ; (1995 A.I.R.SCW 964) that merely because an order of termination was set aside on grounds of lack of opportunity, it was not necessary to direct reinstatement and backwages. Reliance in Jagdish Chander's case (1995 A.I.R. SCW 964) was placed upon Managing Director ECIL v. B Karunakar (1993) 4 SCC 727 : (1994 A.I.R. SCW 1050). It is true that such an order not granting reinstatement or backwages was passed in Jagdish Chander's case (1995 AIR SCW 964) following Karunkar's case. But it has to be noticed that in Karunakar's case, there was a regular departmental inquiry but the inquiry report was not given to the officer. This Court directed the report to be given and set aside the

proceedings from that stage and stated that no order for reinstatement or backwages need be passed at that stage. But in cases like the present where no departmental inquiry whatsoever was held, Karunakar's case, in our view cannot be an authority. As to backwages, no facts, the position in the present case is that there is no material to say that the appellant has been gainfully employed. The appellant is, therefore, entitled to reinstatement and backwages till the date of reinstatement from the date of termination and to continuity of service. Point 4 is decided accordingly."

8. In view of this and considering the undisputed facts before the Labour Court and even before this Court, no reasonable opportunity was given before terminating the service of the respondent workman, who has rendered more than 15 years' service with the petitioner. Therefore, according to my opinion, Labour Court has rightly dealt with matter and gave

reasons in accordance with law. The Labour Court has not committed any error while passing such award and granting the relief in favour of the respondent - workman. Learned AGP, Mr.Patel, is not able to point out any infirmity in the award passed by the Labour Court. The view taken by the Labour Court is perfectly legal and valid and no error apparently on the face of record has been committed by the Labour Court, which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD, J.)

(vipul)